

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ST. PAUL MERCURY INSURANCE
COMPANY, as Subrogee Of
STAR VIDEO ENTERTAINMENT, L.P.
Plaintiff,

v.

ADT SECURITY SYSTEMS, INC.,
Defendant.

CIVIL ACTION

NO. 96-7526

MEMORANDUM

Broderick, J.

October 16, 1997

Plaintiff St. Paul Mercury Insurance Company ("St. Paul"), as subrogee of its insured Star Video Entertainment ("Star Video"), has filed a motion for reconsideration of this Court's Memorandum and Order of August 5, 1997 granting summary judgment to defendant ADT Security Systems ("ADT"). The allegations in the instant case and the related case captioned Newark Insurance Company, as subrogee of Star Video Entertainment v. ADT Security Systems, Inc. et al., Civil Action No. 96-3469, stem from two separate burglaries of videotapes from Star Video's warehouse in Bristol, Pennsylvania. The burglary in this case took place on or about August 18, 1996, whereas the burglary in the Newark action took place over Memorial Day weekend in May, 1995, fifteen months earlier. ADT installed and maintained the alarm system at Star Video's warehouse for both burglaries, and the same legal counsel represents the parties in both actions.

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 799 F.2d 906, 909 (3d Cir. 1985). St. Paul must establish one of three grounds: (1) the availability of new evidence not previously available; (2) an intervening change in controlling law; or (3) the need to correct a clear error of law or to prevent manifest injustice. Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994). St. Paul may not submit evidence which was available to it prior to the Court's grant of summary judgment. Id. at 97. A motion for reconsideration is "not properly grounded on a request that a court rethink what it has already considered." United States Fire Ins. Co. v. Aetna Casualty & Surety Co., 1997 WL 28710, *1 (E.D. Pa. Jan. 24, 1997) (citing Glendon Energy Co. v. Borough of Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993)).

St. Paul raises three reasons why the Court should reconsider the award of summary judgment to ADT on St. Paul's claims for negligence, gross negligence, and breach of contract.

First, St. Paul contends that "ADT has failed to meet its burden of establishing that no genuine issues of material fact exist." The United States Supreme Court has clearly rejected St. Paul's contention that ADT had an initial burden of establishing the absence of genuine issues of material fact. In Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986), the Supreme Court ruled that the party seeking summary judgment must only inform the Court of the basis for its motion. There is "no express or

implied requirement in Rule 56 that the moving party support its motion with affidavits or other similar materials negating the opponent's claim." Id. (emphasis in original). In Celotex, the Supreme Court stated:

According to respondent's argument, since petitioner did not "support" its motion with affidavits, summary judgment was improper in this case. But as we have already explained, a motion for summary judgment may be made pursuant to Rule 56 "with or without supporting affidavits." In cases like the instant one, where the nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary judgment motion may properly be made in reliance solely on the "pleadings, depositions, answers to interrogatories, and admissions on file." Such a motion, whether or not accompanied by affidavits, will be "made and supported as provided in this rule," and Rule 56(e) therefore requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the "depositions, answers to interrogatories, and admissions on file" designate "specific facts showing that there is a genuine issue for trial."

...
[W]e do not think that [our summary judgment jurisprudence] should be construed to mean that the burden is on the party moving for summary judgment to produce evidence showing the absence of a genuine issue of material fact, even with respect to an issue on which the nonmoving party bears the burden of proof. Instead, as we have explained, the burden on the moving party may be discharged by "showing" -- that is, pointing to the district court, that there is an absence of evidence to support the nonmoving party's case.

Id. at 324-25. St. Paul, the nonmoving party, did not meet its burden of designating specific facts in this case showing that there was a genuine issue for trial. Moreover, ADT's motion for summary judgment clearly informed the Court of the basis for its motion. ADT's motion for summary judgment applied the legal arguments it raised in Newark to the factual record created by

the parties in St. Paul. Contrary to St. Paul's contention, ADT did not need to present any affidavits, depositions or other materials demonstrating the absence of genuine issues of material fact. Indeed, as the Supreme Court ruled in Celotex, the court could have entered summary judgment sua sponte without any submission from ADT, so long as St. Paul was on notice that it had to come forward with all of its evidence. Id. at 326. ADT's motion for summary judgment plainly put St. Paul on such notice.

St. Paul also seeks reconsideration of the Court's award of summary judgment on the grounds that the ruling is inconsistent with this Court's ruling in Newark, where the Court only granted partial summary judgment to ADT. St. Paul claims that the factual records in the two cases are identical. However, as heretofore stated, the Court granted summary judgment in this action because St. Paul failed to raise any genuine issue of material fact regarding its allegations that ADT was negligent, grossly negligent or had breached its contract in connection with the burglary that gave rise to this action. St. Paul only filed a one-page response to ADT's summary judgment motion, which set forth in full, stated:

Plaintiff incorporates by reference its opposition to ADT Security System's, Inc.'s Motion for Summary Judgment filed in the case captioned Newark Insurance Company, Inc., as Subrogee of Star Video Entertainment v. ADT Security Systems, Inc. at Civil Action No. 96-CV-3469 as though the same were set forth herein at length.

As the Court explained in its August 5th Memorandum,

St. Paul, the non-moving party, did not by affidavits, depositions, answers to interrogatories or admissions raise a genuine issue of material fact concerning its claims for negligence, gross negligence, or breach of contract in this case. St. Paul failed to provide any evidence whatsoever concerning the second burglary of Star Video's warehouse in Bristol, Pennsylvania on or about August 18, 1996. The materials submitted in the Newark case only concerned the first burglary of Star Video's warehouse, not the second burglary. Just because this Court ruled in Newark that Newark Insurance Company had raised genuine issues of material fact regarding its claims for negligence, gross negligence, and breach of contract in connection with the May, 1995 burglary in no way supports a similar finding in this action, which involves a separate burglary that took place fifteen months later.

Finally, St. Paul has submitted deposition testimony for the first time in an attempt to demonstrate the existence of material facts concerning St. Paul's claims that ADT was also negligent, grossly negligent and in breach of contract in connection with the second burglary in August, 1996. The Court, however, cannot consider evidence that was available to St. Paul prior to the Court's award of summary judgment, and St. Paul makes no attempt to show that these depositions are "newly discovered evidence." Smith, 155 F.R.D. at 96-97.

In summary, St. Paul has failed to present any reason to justify altering or amending the Court's award of summary

judgment to ADT on St. Paul's claims for negligence, gross negligence, and breach of contract. Accordingly, the Court's Memorandum and Order of August 5, 1997 will remain in full force and effect. The remainder of the Court's Memorandum and Order of August 5, 1997, awarding summary judgment to ADT on St. Paul's breach of implied warranty and New Jersey Consumer Fraud Act claims, will also remain in full force and effect, as St. Paul has not moved for reconsideration of those rulings.

An appropriate Order follows.

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ORDER

AND NOW, this 16th day of October, 1997, upon consideration of St. Paul's motion filed August 11, 1997 for reconsideration of this Court's Memorandum and Order of August 5, 1997; after reconsideration, the Court having determined for the reasons set forth in the Court's Memorandum of this date that St. Paul has failed to present any reason to justify altering or amending the Court's Memorandum and Order of August 5, 1997;

IT IS ORDERED: The Court's Memorandum and Order of August 5, 1997 shall remain IN FULL FORCE AND EFFECT.

RAYMOND J. BRODERICK, J.